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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 680

REBECCA SIMON WOLFSOHN, Executrix for the Estate of JOEL DAVID WOLFSOHN, Deceased,
Petitioner,

v.

GREGORY HANKIN and PROFESSIONAL INVESTMENT MANAGEMENT COMPANY,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia

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PETITION FOR REHEARING

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PETITION FOR REHEARING

Respondent Hankin (hereinafter referred to as Respondent) petitions this Honorable Court to reconsider the judgment entered in the above entitled matter, and Respondent's suggestion to strike Petitioner's Reply Brief, and as reasons therefor assigns as follows:

I. AS TO THE JUDGMENT ENTERED.

1. On February 24, 1964, the Court granted a writ of certiorari in the above matter and reversed the judgment of the United States Court of Appeals for the District of Columbia Circuit. In reversing the judgment upon the authorities cited, the Court held that the appeal had been timely taken, and that the cause must be remanded to the Court of Appeals for adjudication on the merits.

2. Respondent takes no issue with the Court's action in granting the writ and in reversing the judgment of the Court of Appeals. He submits, however, that no useful purpose would be served by remanding the cause to the Court of Appeals, because there is clearly no cause of action.

(a) The complaint for breach of contract was brought against Respondent who was not a party to the contract; hence Respondent was not a proper party defendant.

(b) Treating the complaint as an action in tort, the right of action (if any there was) did not survive the decedent, and his Executrix was not a proper party plaintiff.

(c) These two propositions, which must be resolved in favor of Respondent, stand as insurmountable obstacles to a consideration of any substantive questions in the case. It would be an idle gesture to require the Court of Appeals to consider the merits, when there are no merits to be considered.

3. In this view, the judgment of the District Court must be affirmed, and the Order of this Court should therefore read:

> The judgment of the Court of Appeals is reversed (on the authorities cited) and that of the District Court is affirmed.

This would dispose of the case in its entirety, including the action brought against Professional Investment Management Company (PIMCO).

II. AS TO PETITIONER'S REPLY BRIEF.

Respondent, a member of the bar of this Court for over 36 years, deems it his professional duty again to request and now moves, that the Reply Brief filed by Mr. Fred I. Simon, Attorney for Petitioner, be stricken from the files of this Court and that the Court exercise its powers of supervision, and point the way for the courts below to act in similar circumstances.

1. While presenting this Petition for Rehearing as a matter of professional duty, Respondent does not pretend that he has not been personally hurt by Mr. Simon's repetitious scandalous and libelous abuses. For over two years in practically every paper filed by him, Mr. Simon has pursued a course of vilification, as if trying his utmost to provoke Respondent into action unbecoming a gentleman and a member of the bar. He made numerous scandalous and libelous attacks upon Respondent [2], he made numerous false accusations and other false statements[3], resorting to distortions of fact[4], making state-

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[1] Although PIMCO was named as respondent in the title of the case, it is not a real adverse party herein, as was shown in Respondent's Statement in Opposition (p2n). Petitioner has also demonstrated that this is so, because no copy of the Petition for Writ of Certiorari has ever been served on PIMCO. This would have been done under Rule 33 of this Court, if PIMCO were an adverse party. However, if it is necessary to make a separate disposition of the case with respect to PIMCO, Respondent respectfully suggests that as to it, the Petition for Writ of Certiorari should be "dismissed as improvidently granted."

[2] E.g. JA 4, 10-11, 31, 32; SA 84, 85, 92, 94, 96-101, 103-6, 109-11, 117-8, 149-50; R 191, 192, 193, 195-7, 208, 216, 237; Reply Brief herein pp 8, 11, 12.

[3] E.g. JA 10-11, 24, 31, 33, 34, 35, 36, 41-2, 43, 50-1; SA 77, 83, 92, 95-7; R 194, 203-8, 210, 213-6; Reply Brief herein pp. 6, 9, 13, 14.

[4] E.g. JA 14-5, 24, 27, 30, 36, 38, 44, 45; SA 84, 98-101, 118; R 194; Reply Brief herein pp. 2, 6, 12.

ments which are not in the record[5] and otherwise violating the canons of professional ethics.[6] This continuous onslaught was not limited to Respondent, but extended to others concerned with the controversy.

(a) While Mr. Simon in numerous ways called Respondent a crook, a fraud, etc. he said the same things about the Hon. Oscar L. Chapman; to wit, that he was willing to "cheat, wrong and defraud the widow of his former partner" (SA 118).

(b) In the Court of Appeals, Mr. Simon, in his "Motion for Summary Reversal", excelled himself in vilifying the Respondent, but then he also accused District Judge Edward M. Curran of hypocrisy, charging that his ruling was prompted by "dissimulation", rather than by rules of law (R. 185).

(c) In his Reply Brief in this Court, Mr. Simon repeated many of his abusive epithets about the Respondent, but then he also charged that the Court of Appeals was without integrity, saying that "sand has been substituted for integrity in the instant proceedings" (p. 16), and he showed utter contempt by the use of such phraseology as "the Court of Appeals should have been shocked out of its torpor" (p. 8).

2. Respondent suggested in the District Court that disciplinary action be taken against Mr. Simon (SA 123-30). That Court declined to do anything (SA 153 para 5). This encouraged Mr. Simon in his course of conduct (See R. 185-221). In the Court of Appeals Respondent moved to strike Mr. Simon's "Motion for Summary Reversal" (R. 223-231). He also moved to refer Mr. Simon's professional misconduct to the Committee on Admissions and Grievances pursuant to the

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[5] R 190-4, Reply Brief herein pp. 2, 4.

[6] See R. 247-62.

Rules of that Court (R. 247-62). These motions were denied (R. 266, 268). The result that throughout the proceedings which followed, Mr. Simon was unrestrained in his abusive conduct, both in the Court of Appeals and in this Court.

If such behavior on the part of a member of the bar is condoned, one can only wonder what is to be expected of the man in the street, by way of respect for our judicial process.

Respondent believes that a contest in a court of law must proceed strictly upon the law and the facts of the case. The United States courts are not the appropriate forum for what might properly be described as a "brawl". This applies especially to members of the bar in their behavior toward each other and toward the courts. The facts herein are on all fours with those in *Duke* v. *Committee on Grievances*, 83 F.2d 890, where the Court of Appeals for the District of Columbia, quoting from a previous case, held as follows (p. 895):

> "The oath taken by the attorney pledges him to demean himself as an attorney and counsellor of the Court uprightly and according to law * * *. He has no right to attempt to cast foul and unfounded aspersions upon the character and conduct of his brother members of the bar, any more than he has to asperse and defame, without justification, the character and motives of the judge upon the bench. Especially is he without warrant in an attempt to make the records of the courts, from the lowest to the highest, vehicles of malicious scandal and libel of any member of the bar. Upon any other principle for the government of the bar, it would be impossible to conduct business with decorum and with due regard to the orderly proprieties of a court of justice. * * * The bar are entitled to be protected against such abuse of privileges by any of its brother members. Indeed, the power of disbarment, as means

of protection, would be of little practical use, if it were not applicable to such cases."

WHEREFORE, Respondent prays as follows:

1. That this petition for reconsideration be granted.

2. That the judgment of this Court heretofore rendered in this case be modified to read:

"The judgment of the Court of Appeals is reversed and that of the District Court is affirmed."

3. That the Court order that Petitioner's reply brief be stricken from the files of this Court and that it issue such further orders as it may deem just and proper.

Respectfully submitted,

GREGORY HANKIN
Attorney pro se

CERTIFICATE OF COUNSEL

This is to certify that the above petition for Rehearing is filed in good faith and not for purposes of delay.

GREGORY HANKIN
Attorney pro se